

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MIMEDX GROUP, INC. and SEAN  
MCCORMACK,

Plaintiffs,

v.

SPARROW FUND MANAGEMENT LP,  
A/K/A “AURELIUS VALUE”; VICEROY  
RESEARCH; JOHN FICHTHORN; BR  
DIALECTIC CAPITAL MANAGEMENT,  
LLC, and DOES 1-10, inclusive,

Defendants.

**Case No. 1:17-cv-07568 (PGG) (KHP)**

**DECLARATION OF DANIEL J. HORWITZ IN SUPPORT OF PLAINTIFF SEAN  
MCCORMACK’S SUPPLEMENTAL MOTION IN FURTHER SUPPORT OF  
PLAINTIFFS’ MOTION FOR EXPEDITED DISCOVERY OF AN EMERGENCY BASIS**

I, Daniel J. Horwitz, declare as follows:

1. I am a member in good standing of the bar of the State of New York. I am a Partner at the law firm McLaughlin & Stern, LLP, attorneys for Plaintiff Sean McCormack (“Mr. McCormack”) in the above-captioned action.

2. I submit this declaration in support of Mr. McCormack’s supplemental motion in further support of the motion of Mr. McCormack and MiMedx Group, Inc. (“MiMedx”) (collectively, “Plaintiffs”) for expedited discovery on an emergency basis. More specifically, the instant application seeks leave to conduct limited expedited discovery to uncover the identity of the party behind defendant Viceroy Research (“Viceroy”) to facilitate service of process of the Complaint here.

3. As further set forth in the Complaint, beginning in or around September 2017, Viceroy began publishing defamatory articles on the Internet about Mr. McCormack and his

employer, MiMedx, as part of an effort by Viceroy and other defendants to disseminate false information about Plaintiffs and profit by short-selling MiMedx's stock.

4. Specifically, Viceroy stated that while working for Advanced BioHealing, Mr. McCormack made false or fraudulent claims for medical products and services to government agencies and labeled Mr. McCormack as, among other things, a "key influence" or "instrumental figure in Advanced BioHealing's kickback and bribery inducement scheme," with no factual basis whatsoever.

5. Mr. McCormack has suffered significant professional and personal injury as result of Viceroy's defamatory statements about him, which remain posted on the Internet. Indeed, a simple Google search of "Sean McCormack" and "MiMedx" together generates at least four results associating Mr. McCormack with the utterly false allegations of criminal activity at Advanced BioHealing. Annexed hereto as **Exhibit A** is a true and correct copy of a screenshot of a Google search of "Sean McCormack" and "MiMedx" run on December 26, 2017.

6. On November 30, 2017, Viceroy published another defamatory article concerning MiMedx. The article contained three separate letters from various governmental agencies in response to Viceroy's Freedom of Information Act ("FOIA") requests. In each letter, Viceroy attempted to conceal its identity by redacting the contact information, the return address for the requested documents, and the identification numbers associated with the FOIA requests before posting the documents on its website. Annexed hereto as **Exhibit B** is a true and correct copy of the November 30, 2017 article published by Viceroy on its website, [www.viceroyresearch.org](http://www.viceroyresearch.org).

7. Viceroy, however, failed to redact the FOIA request number on the U.S. Securities and Exchange Commission's response letter dated August 23, 2017. Annexed hereto as **Exhibit C** is a true and correct copy of the response letter dated August 23, 2017.

8. Additionally, Viceroy failed to properly apply its redactions to its FOIA requests and the underlying information in those requests can be viewed with Adobe Acrobat Pro 2017 (“Adobe Acrobat”) software.

9. Using Adobe Acrobat, any user is able to remove the improperly-applied redactions from the U.S. Department of Justice, Civil Division, FOIA response, dated November 13, 2017. By selecting the improperly-applied redaction and deleting the redaction images, the requester’s name, physical address, and email address is easily discoverable. Annexed hereto as **Exhibit D** is an illustration of the steps undertaken in Adobe Acrobat to remove the redactions on Viceroy’s FOIA requests.

10. Removing the improperly-applied redactions reveals the identity of a law firm that appears to have drafted and filed the FOIA requests related to MiMedx on Viceroy’s behalf:

Garrett S. Martin, Esq.  
Winstead, PC  
300 Throckmorton Street  
Fort Worth, TX 76102  
gmartin@winstead.com

11. Accordingly, Mr. McCormack respectfully requests leave to amend Plaintiffs’ previously-filed motion for expedited discovery to add an additional third-party subpoena seeking similarly specific, narrowly-tailored, and limited discovery from Winstead PC to ascertain the true identity of Viceroy to effectuate service of process on Viceroy.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 27, 2017

/s/ Daniel J. Horwitz  
Daniel J. Horwitz, Esq.